IN THE

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. [redacted] 8

NATIONAL SURETY COMPANY, et al.,
Petitioners (Appellants Below),

vs.

VALERIA E. CORIELL,
Respondent (Appellee Below),

MORRIS WHITE, INC.,
Respondent (Appellee Below),

IRVING TRUST COMPANY,
as Receiver of Morris White, Inc.,
Respondent (Appellee Below),

MICHAEL HOLLANDER, et al.,
constituting a Committee of Creditors of Morris White, Inc.,
Respondent (Appellee Below).

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

GREGORY HANKIN,
CHARLES H. TUTTLE,
SAUL S. MYERS,
Counsel for Petitioners.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1931.

No. 726.

NATIONAL SURETY COMPANY, *et al.*,
Petitioners (Appellants Below),

vs.

VALERIA E. CORIELL,
Respondent (Appellee Below),

MORRIS WHITE, INC.,
Respondent (Appellee Below),

IRVING TRUST COMPANY, as Receiver of
Morris White, Inc.,
Respondent (Appellee Below),

MICHAEL HOLLANDER, *et al.*, Constituting a Committee of
Creditors of Morris White, Inc.,
Respondent (Appellee Below).

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

Petitioners suggest that there is a diminution of the record in the above entitled cause and respectfully move that this Court issue its writ of certiorari herein, directed to the District Court of the United States for the Southern District of New York, commanding that court to certify and send to this Court certain additional transcripts of record in causes: Equity No. E 59-126 entitled *Valeria E. Coriell* v. *Morris White, Inc.* and Bankruptcy

No. 53927 entitled *In the Matter of The Morris White Handbags Corporation.*

The objects of this motion are as follows:—

In the petition for writ of certiorari in the above entitled cause, we have raised important questions of law as to the power and jurisdiction of the Equity Court in the receivership herein, where the corporation was insolvent at the time the petition for receivership was filed and assented to. The decision of these important questions of law should not be hindered by any disputes as to facts. Respondents, however, insist that the defendant corporation was solvent, despite the statements in the opinions of both the District Court and the Circuit Court of Appeals. But it is significant that at the same time, on April 13, 1932, an involuntary petition in bankruptcy was filed against The Morris White Handbags Corporation, the corporation to which the properties of Morris White, Inc. were transferred under the so-called sale to Lily White. It is also significant that although the petition in bankruptcy was *involuntary*, the act of bankruptcy alleged in that petition was that "on or about the 12th day of April 1932, they admitted in writing their inability to pay their debts and their willingness to be adjudicated a bankrupt on that ground" and consented in writing to the adjudication in bankruptcy.

At the same time the creditors filed a petition for the appointment of a receiver, and The Morris White Handbags Corporation consented to an order appointing a receiver.

We believe that the record in this bankruptcy case will resolve all doubt as to the insolvency of the defendant herein at the time the petition for receivership was filed. The Morris White Handbags Corporation, as the record in the present case shows, is substantially the same as Morris White, Inc., except that the original claims were reduced, by the reorganization plan, to 20%. If with 20% of the claims the corporation is bankrupt, it stands

to reason that it was bankrupt with 100% of the claims outstanding.

Petitioners also maintained that the Equity Court, by making the receivership permanent, deprived petitioners of certain rights guaranteed by the Bankruptcy Act, among them being a right to examine the defendant as to its assets and liabilities. Petitioners complained that although they had often requested that a certified statement of the assets and liabilities be furnished, no one would certify to the schedules filed. After the Circuit Court of Appeals rendered its judgment, a new claim in the sum of $1,025,000 suddenly came to light. If there are no other undisclosed claims, this would raise the amount of the claims to $2,097,000. Still, respondents represent (in their brief in rejoinder p. 5) that the amount of the claims is only $1,072,000.

We believe that the record of the proceedings in the District Court with reference to this new claim of $1,025,000 will obviate any dispute as to facts with reference to petitioners' argument concerning their rights under the Bankruptcy Act.

Respondents have indicated (Brief in Rejoinder p. 2) that any correction of the diminution of the record must be made in the lower court. That this Court has the power, on "suggestion of a diminution of the record and motion for a writ of certiorari", to order that subsequent proceedings be included in the record before the Court, is illustrated by the fact that on October 12th, 1931, this Court granted such motion in Case No. 41, *Painters District Council, etc.* v. *United States*, 284 U. S. . Therefore there should be no question as to the propriety of this motion to cause the record as to the new claim to be certified.

Whether this ancillary writ of certiorari may be used to include the record in a collateral proceeding, petitioners do not know. Frankly, we know of no instance where that was done. We see no reason, however, why the use of the ancillary writ should not be thus extended,

where the purpose is not to adjudicate matters in the proceedings thus certified, but rather to throw light on the matters properly before this Court, and to facilitate the determination of facts or to obviate unnecessary disputes as to facts.

Wherefore petitioners pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the District Court of the United States for the Southern District of New York commanding that court to certify and send to this Court all the records filed in connection with the claim of the Equitable Life Assurance Society in Equity cause No. E 59-126, *Coriell* v. *White*, and all the proceedings filed in Bankruptcy cause No. 53927, *In the Matter of The Morris White Handbags Corporation.*

Respectfully submitted,

GREGORY HANKIN,
CHARLES H. TUTTLE,
SAUL S. MYERS,
Counsel for Petitioners.

I, SAUL S. MYERS, counsel for the petitioners in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari" are true.

SAUL S. MYERS,
Counsel for Petitioners.

Subscribed and sworn to before me this 11th, day of May, A. D. 1932.

CHAS. MEYER, Notary Public, N. Y. Co.